



March 6, 2021

The Honorable Evans G. Daniels
Director
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007

Dear Director Daniels,

Thank you for the opportunity to provide comments on the proposed rule on Mental Health Parity dated February 4, 2022 as required by Senate Bill 1523 (“Jake’s Law”) to ensure compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Jake’s Law is a critical step forward toward increasing access to mental health and addiction care in Arizona. Realizing its promise, however, requires strong implementation, including data collection that can guide the Department of Insurance and Financial Institution’s oversight efforts and help determine insurer’s “in-operation” compliance with MHPAEA.

Unfortunately, the proposed rules dated February 4, 2022 were a significant step backwards from the draft rules the Department previously put forward. While the revised rules to implement Jake’s Law would still collect useful information, the large reduction in data available to the Department will likely mean that oversight efforts will be more difficult and likely less effective at identifying potential issues relating to plans’ compliance with state and federal parity rules. Indeed, without important data to steer the Department’s oversight efforts, the revised rules will likely result in less cost-effective use of valuable taxpayer dollars than under the original draft rules.

Prioritizing limited oversight resources should be a priority for any department to ensure that these resources increase access to the mental health and addiction services that residents are entitled to under the law. The original draft rules – including Exhibits B through N – would have given the Department such information. The removal of these exhibits from the new draft proposed rules leaves the Department with significantly less ability to target its oversight efforts in a cost-effective manner and determine compliance.

The removals are particularly ill-timed, because increased treatment and access to services are essential to addressing the mental health and addiction crises Arizona and other states are experiencing. In just 12 months – from April 2020 to April 2021 – fatal overdose deaths in

Arizona surged 28.5 percent.¹ Additionally, mental health needs have surged among youth. While multiple policy responses are needed, Arizona has the opportunity to put in place meaningful rules to implement Jake’s Law and ensure compliance with MHPAEA, which is a foundational component of increasing access to treatment.

Other states are now collecting similar data as was contained in the proposed rules from earlier this year. Notably, the Texas Department of Insurance (TDI) recently adopted regulations that not only require insurers to provide their non-quantitative treatment limitation (NQTL) parity compliance analyses – which MHPAEA now explicitly requires insurers to conduct with the enactment of the Consolidated Appropriations Act, 2021² – but also to report comparative quantitative data relating to claims, utilization review, and reimbursement rates for both behavioral and physical health. In adopting these requirements, TDI knew that such comparative quantitative data was essential to guide its parity oversight efforts, even if disparities do not, of course, by themselves prove that any violations have occurred. Similarly, the Department recognized in its original draft proposed rules that submitted data “does not establish a per se MHPAEA violation.”

Unfortunately, it appears that some insurers have suggested that collecting data to help the Department identify potential red flags is somehow inconsistent with MHPAEA. This is not the case. Additionally, the federal NQTL rule applies to the terms of the plan “as written and in operation.”³ Thus, without any quantitative data, it becomes nearly impossible to evaluate full compliance. Again, such data is not alone determinative of whether an imposition of an NQTL violates MHPAEA, but without such data, it would be extraordinarily difficult to determine whether a plan’s imposition of an NQTL on mental health or substance use disorder benefits in a given classification of care meets the in-operation component of the federal NQTL rule. As mentioned, such data is also critical to identify NQTLs deserving special attention for an “as-written” analysis. Not surprisingly, TDI’s title for its data collection tool – “MH/SUD Parity Rule Division 2 Data Collection Reporting Form” – indicated that data collection and parity are intimately linked.

Collecting the data contained in the original proposed regulations is also **clearly** allowed by Arizona law. Subsection F of Section 20-3502, which was added by Jake’s Law, stipulates:

*Except as otherwise provided in this section, if a health care insurer provided the information required by this section in an existing filing or report, the department may not require the health care insurer to submit any additional filing or report. **The department is not prohibited from otherwise requesting information or data that is necessary to verify compliance with the mental health parity and addiction equity act or this chapter.** The department shall analyze the*

¹ CDC, National Center for Health Statistics, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm>.

² See 42 USC § 300gg–26(a)(8), <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf#page=1719>.

³ 45 CFR § 146.136(c)(4)(i), see Federal Register, “Final Rules Under the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008; Technical Amendment to External Review for Multi-State Plan Program.” November 13, 2013, <https://www.federalregister.gov/d/2013-27086/p-788>.

information required by this section that the health care insurer previously submitted in an existing filing or report to determine compliance with the report required by this section. The department may establish by rule the terms regarding any required resubmittal of information. (Emphasis added)

The Department clearly has the power to request additional “information or data” that is necessary to verify compliance with MHPAEA. It is unfortunate that, in its revised rules, the Department is no longer set to collect such important data within the revised draft proposed rules. While we encourage the Department to restore the information requested in the original draft proposed rules, if the Department declines to do so, it should nonetheless request this information pursuant to R20-6-1302(G) of the revised rules.

Thank you for the opportunity to provide comments on this important issue. Please do not hesitate to contact me at david@thekennedyforum.org if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "David Lloyd". The signature is written in a cursive, flowing style.

David Lloyd
Senior Policy Advisor
The Kennedy Forum